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19 *Pro hac vice admission to be sought

20 *Attorneys for Plaintiff and the Putative Class*

21 **IN THE UNITED STATES DISTRICT COURT**
22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

23 SEYED KAZEROUNI, individually
24 and on behalf of all others similarly
25 situated,

26 *Plaintiff,*

27 v.

28 FEDEX CORP, a Delaware
corporation,

Defendant.

Case No. 8:15-cv-00060

DEMAND FOR JURY TRIAL
CLASS ACTION

1 Plaintiff Seyed Kazerouni brings this Class Action Complaint
2 (“Complaint”) against Defendant FedEx Corp, (“FedEx” or “Defendant”) based
3 upon Defendant’s practice of charging consumers undisclosed fees for receiving
4 internationally shipped packages. Plaintiff, for his Complaint, alleges as follows
5 upon personal knowledge as to himself and his own acts and experiences and,
6 as to all other matters, upon information and belief, including investigation
7 conducted by his attorneys.

8 NATURE OF THE ACTION

9 1. As one of the premier shipping and courier services in the world,
10 Defendant FedEx ships millions of packages on a daily basis to countries
11 worldwide.

12 2. Goods shipped internationally to the United States by FedEx may
13 incur governmental customs fees. The package recipient is responsible for these
14 costs.

15 3. However, to increase its own revenues, FedEx pays the customs
16 fee for goods shipped internationally and then passes those costs on to the
17 package recipient—but not before tacking on an additional and artificial
18 “advancement fee” in the amount of \$6.50 or 2% of the overall customs fee,
19 whichever is greater.

20 4. FedEx does not disclose the existence of this advancement fee until
21 it is already due and owing, and likewise, it does not provide the package
22 recipient with any alternative options beforehand to avoid the added cost. As
23 part of claiming the package, the recipient must pay the undisclosed
24 advancement fee or risk having FedEx direct the debt to a collections agency or
25 not deliver the package.

26 5. Thousands, if not millions, of consumers nationwide have been
27 subjected to FedEx’s undisclosed advancement fee. Those consumers, including
28 Plaintiff, placed an international purchase order (or otherwise were shipped a

1 package) with the understanding that only the merchant's stated shipping
2 charges and any applicable government customs fees would apply. Plaintiff and
3 other Class members did not expect, and were not informed until after payment
4 was due, that additional FedEx fees would also be incurred. As such, Plaintiff
5 brings this putative class action to recover damages in the form of monies paid
6 to Defendant.

7 **PARTIES**

8 6. Plaintiff Seyed Kazerouni is a natural person and citizen of the
9 State of California.

10 7. Defendant FedEx Corp is a corporation incorporated and existing
11 under the laws of the State of Delaware with its principal place of business
12 located at 942 South Shady Grove Road, Memphis, Tennessee 38120. FedEx
13 does business in the State of California, this District, and nationwide.

14 **JURISDICTION AND VENUE**

15 8. The Court has subject matter jurisdiction over this action pursuant
16 to 28 U.S.C. § 1332(d), because (a) at least one member of the putative class is
17 a citizen of a state different from Defendant, (b) the amount in controversy
18 exceeds \$5,000,000, exclusive of interest and costs, and (c) none of the
19 exceptions under that subsection apply to this action.

20 9. The Court has personal jurisdiction over Defendant because it is
21 registered to conduct business in this District (as California Secretary of State
22 Entity No. C2172803), it conducts significant business in this District, and the
23 unlawful conduct alleged in the Complaint occurred in, was directed to, and/or
24 emanated from this District.

25 10. Venue is proper in this District under 28 U.S.C. § 1391(b) as
26 Defendant conducts significant business in this District and the injuries of
27 which Plaintiff complains arose, in part, in this District. Venue is additionally
28 proper because Plaintiff resides in this District.

FACTUAL BACKGROUND

11. Defendant FedEx is based in the United States and has become one of the largest international shipping companies in the world, transporting millions of packages worldwide every day.

12. Through its international shipping network, tens of thousands of consumers in the United States receive FedEx packages from abroad every day, including from international retailers.

13. When a consumer places an order with an international retailer, the shipping information provided generally includes the cost and in some cases identifies the shipping provider (e.g., FedEx). After agreeing to the purchase and shipping costs, the consumer submits payment information.

14. In many instances, the international retailer warns the purchaser that customs fees may be imposed on his or her order. However, because the retailer cannot reliably calculate this figure for each country and item sold, the fee is neither included nor identified.

15. For example, a customs fee warning may include text similar to the following:

If you are shopping from outside of the European Union, you may be required to pay a customs fee. Please see our terms and conditions for further details.

The terms and conditions might include a statement such as:

Non-EU customers may be required to pay customs or import duties when parcels reach the destination country. These charges must be paid in full by the recipient of the parcel. Customs and import duties vary widely from country to country, and we are therefore not able to inform you of specific charges for your country. The customer takes full liability for all postal charges, return shipment costs, customs charges and handling fees should they refuse to accept a parcel due to import duties or taxes. Please note: we cannot declare parcels as gifts or undervalue parcels.

16. These warnings put consumers on notice that their respective government may add a customs fee on top of a product's purchase price. What

1 is not disclosed to the consumer at the time of purchase, however, is the
2 additional and non-descript “advancement” fee imposed by FedEx. In fact, the
3 majority of consumers only discover this fee upon an extra close inspection of
4 their FedEx invoice.

5 17. After a product is purchased from an international retailer—and in
6 many cases before the product reaches the purchaser—FedEx sends an invoice
7 to the recipient.

8 18. At the top of the invoice is a “summary” of FedEx services and a
9 single line item that reads: “Duties, Tax, Customs, Other Fees.” Next to this line
10 item is a single figure—with no additional explanation of how it was
11 calculated—and no indication that FedEx imposed a portion of the charge.

12 19. If a consumer explores the invoice further, he or she may discover
13 that on the third page, written in text with smaller font than any other text in the
14 entire invoice, is a breakdown of the Customs Duty and an unexplained
15 Advancement Fee of at least \$6.50 (or 2% of the customs fee, whichever is
16 greater). Here, as with the price listed on the first page of the invoice, it is never
17 disclosed to the consumer that FedEx, *not the government*, charged this fee.

18 20. The disturbing reality is that the only way a consumer could learn
19 that the Advancement Fee originates from FedEx is to perform a search for the
20 fee on the Internet or contact FedEx’s offices directly.

21 21. FedEx defines the Advancement Fee as a “convenience” fee
22 charged by FedEx for paying the Customs Duty and billing the package
23 recipient.

24 22. Defendant does not disclose this cost in advance of billing the
25 package recipient and does not offer the consumer an opportunity to pay the
26 Customs Duty (either directly to the government or to FedEx itself).

27 23. Rather, at the point in time the consumer receives the invoice, the
28 Customs Duty has already been paid and the Advancement Fee is due and

1 owing. In instances where the package does not arrive prior to receipt of the
2 invoice, FedEx may withhold the package until the Advancement Fee is paid. If
3 the package has already arrived and the recipient refuses to pay the
4 Advancement Fee, FedEx will eventually send the outstanding balance to a
5 collections agency.

6 24. Although \$6.50 is the *minimum* Advancement Fee (even if the
7 customs fee is much lower), FedEx's policy is to charge the greater of \$6.50 or
8 2% of the total duties and taxes paid. Thus, the 2% Advancement Fee can
9 become quite large where the consumer owes significant customs fees.

10 25. As described herein, FedEx's Advancement Fee is a deceptive and
11 unfair business practice for at least the following reasons: (1) the fee is not
12 disclosed or consented to by the consumer; (2) it is intentionally buried and
13 minimized in Defendant's Customs Duty invoice (leading the average consumer
14 to believe the cost is a mandatory government fee); and (3) the charge is
15 presented as a "take it or leave it" proposition, whereby consumers must pay the
16 fee or ultimately face the potential threat of being subject to action by a
17 collections agency or not receiving their packages.

18 26. Consumers, like Plaintiff and the putative Class, who were forced
19 to pay Defendant's Advancement Fee without proper notice or authorization,
20 were harmed in the form of monies paid to Defendant and now seek to recover
21 actual damages, injunctive relief to prevent this conduct from occurring again,
22 and costs and reasonable attorneys' fees.

23 **PLAINTIFF KAZEROUNI'S EXPERIENCE**

24 27. On May 27, 2014, Plaintiff Seyed Kazerouni placed an online
25 order at Unisportstore.com for several World Cup jerseys.

26 28. During the checkout process, Plaintiff agreed to pay a €20 fee for
27 FedEx shipping.

28 29. On the checkout page, Plaintiff viewed a representation that he

1 may be liable for governmental customs fees for shipping the items to the
2 United States.

3 30. Several weeks later, Plaintiff Kazerouni received notice that his
4 items had shipped. On July 15, 2014, a week after receiving his package,
5 Plaintiff received an invoice from Defendant FedEx representing that he owed
6 \$91.22 for “Duties, Tax, Customs, Other Fees.” As Plaintiff had expected to
7 pay a customs fee to the government, the bill itself was not wholly unexpected.
8 However, upon closer inspection of the invoice, Plaintiff discovered (on the
9 third page in small print) that FedEx had already paid the Customs Duty and
10 that it had added an additional \$6.50 “Advancement Fee.”

11 31. Plaintiff never received notice that an Advancement Fee would
12 apply to his purchase, did not give FedEx permission to pay the Customs Duty
13 for him in advance (with or without an additional charge), and never authorized
14 any additional fees to be levied or charged by FedEx beyond the €20 shipping
15 fee he paid at checkout.

16 32. Because Plaintiff was concerned that U.S. Customs would get
17 involved and he might be exposed to additional fines, Plaintiff paid his FedEx
18 bill in full.

19 33. Had Plaintiff been given notice of the Advancement Fee and been
20 provided an opportunity to pay the Customs Duty directly, he would have done
21 so as a means to avoid additional FedEx charges.

22 CLASS ALLEGATIONS

23 34. **Class Definition:** Plaintiff brings this action pursuant to Federal
24 Rules of Civil Procedure 23(b)(2) and (b)(3) on behalf of himself and a
25 proposed class (the “Class”) defined as follows:

26 All individuals in the United States who paid an Advancement Fee
27 to Defendant FedEx Corp as the result of an international package
28 delivery.

1 The following people are excluded from the Class: (1) any Judge or Magistrate
 2 presiding over this action and members of their families; (2) Defendant,
 3 Defendant's subsidiaries, parents, successors, predecessors, and any entity in
 4 which the Defendant or its parents have a controlling interest and its
 5 current or former employees, officers and directors; (3) persons who properly
 6 execute and file a timely request for exclusion from the Class; (4) persons
 7 whose claims in this matter have been finally adjudicated on the
 8 merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel;
 9 and (6) the legal representatives, successors, and assigns of any such excluded
 10 persons.

11 35. **Numerosity**: The exact number of the members of the Class is
 12 unknown and not available to Plaintiff at this time, but it is clear that individual
 13 joinder is impracticable. Defendant has deceived and profited from thousands of
 14 consumers who fall into the definition set forth above. Members of the Class
 15 can be identified through Defendant's records.

16 36. **Commonality**: There are many questions of law and fact common
 17 to the claims of Plaintiff and the Class, and those questions predominate over
 18 any questions that may affect individual members of the Class. Common
 19 questions for the Class include, but are not limited to the following:

20 (a) Whether Defendant's conduct alleged herein constitutes violations
 21 of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;

22 (b) Whether Defendant's conduct alleged herein constitutes violations
 23 of Cal. Civ. Code §§ 1750, *et seq.*;

24 (c) Whether Defendant's conduct alleged herein constitutes fraud by
 25 omission; and

26 (d) Whether Defendant's conduct alleged herein constitutes unjust
 27 enrichment.

28 37. **Typicality**: Plaintiff's claims are typical of the claims of other

1 members of the Class, as Plaintiff and other members sustained damages arising
2 out of the wrongful conduct of Defendant, based upon the same transactions
3 that were made uniformly with Plaintiff and the public.

4 38. **Adequate Representation**: Plaintiff will fairly and adequately
5 represent and protect the interests of the Class, and has retained counsel
6 competent and experienced in complex litigation and class actions. Plaintiff has
7 no interests antagonistic to those of the Class, and Defendant has no defenses
8 unique to Plaintiff.

9 39. **Policies Generally Applicable to the Class**: This class action is
10 appropriate for certification because Defendant has acted or refused to act on
11 grounds generally applicable to the Class as a whole, thereby requiring the
12 Court's imposition of uniform relief to ensure compatible standards of conduct
13 toward the members of the Class and making final injunctive relief appropriate
14 with respect to the Class as a whole. Defendant's policies challenged herein
15 apply and affect members of the Class uniformly and Plaintiff's challenge of
16 these policies hinges on Defendant's conduct with respect to the Class as a
17 whole, not on facts or law applicable only to Plaintiff. The factual and legal
18 bases of Defendant's liability to Plaintiff and to the other members of the Class
19 are the same, resulting in injury to the Plaintiff and to all of the other members
20 of the Class. Plaintiff and the other members of the Class have suffered similar
21 harm and damages as a result of Defendant's unlawful and wrongful conduct.

22 40. **Superiority**: This case is also appropriate for class certification
23 because class proceedings are superior to all other available methods for the fair
24 and efficient adjudication of this controversy as joinder of all parties is
25 impracticable. The damages suffered by the individual members of the Class
26 will likely be relatively small, especially given the burden and expense of
27 individual prosecution of the complex litigation necessitated by Defendant's
28 actions. Thus, it would be virtually impossible for the individual members of

1 the Class to obtain effective relief from Defendant's misconduct. Even if
 2 members of the Class could sustain such individual litigation, it would still not
 3 be preferable to a class action, because individual litigation would increase the
 4 delay and expense to all parties due to the complex legal and factual
 5 controversies presented in this Complaint. By contrast, a class action presents
 6 far fewer management difficulties and provides the benefits of single
 7 adjudication, economy of scale, and comprehensive supervision by a single
 8 Court. Economies of time, effort and expense will be fostered and uniformity of
 9 decisions ensured.

10 **FIRST CAUSE OF ACTION**
 11 **Violation of California's Unfair Competition Law**
 12 **Cal. Bus. & Prof. §§ 17200, *et seq.***
(On Behalf of Plaintiff and the Class)

13 41. Plaintiff incorporates the foregoing allegations as if fully set forth
 14 herein.

15 42. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof.
 16 Code §§ 17200, *et seq.*, protects both consumers and competitors by promoting
 17 fair competition in commercial markets for goods and services.

18 43. The UCL prohibits any unlawful, unfair, or fraudulent business act
 19 or practice. A business practice need only meet one of the three criteria to be
 20 considered unfair competition.

21 44. As alleged herein, Defendant's practice of imposing an
 22 "Advancement Fee" fee on goods shipped internationally to the United States
 23 constitutes an unfair business practices in violation of Cal. Bus. & Prof. Code
 24 §§ 17200, *et seq.*

25 45. In particular, Defendant intentionally chose to design its
 26 international shipping program so that Plaintiff and the Class would not receive
 27 notice of or consent to its Advancement Fee for internationally shipped goods.

28 46. Likewise, Defendant intentionally chose to include its

1 Advancement Fee in the overall summary of charges on its invoices without
 2 disclosing the additional charge to Plaintiff and the Class. In addition,
 3 Defendant deliberately made it difficult for Plaintiff and the Class to locate the
 4 “Advancement Fee” by listing the charge (without explanation) several layers
 5 deep within the invoice, and using small, non-descript font.

6 47. Finally, the charge is presented as a “take it or leave it”
 7 proposition, whereby Plaintiff and members of the Class were forced to pay the
 8 Advancement Fee or potentially be subjected to action by a collections agency
 9 and/or not receive the packages.

10 48. Defendant has also violated the “fraudulent” prong of the UCL in
 11 that it deliberately and fraudulently omitted from the terms presented to
 12 Plaintiff and members of the Class that goods shipped internationally would be
 13 charged an “Advancement Fee.”

14 49. Defendant has also violated the “unlawful” prong of the UCL in
 15 that its conduct violated the Consumer Legal Remedies Act (Cal. Civ. Code §§
 16 1750, *et seq.*), as explained below.

17 50. Plaintiff and the Class have suffered harm as a proximate result of
 18 Defendant’s violations of law and wrongful conduct in the form of monies lost.
 19 Pursuant to Cal. Bus. & Prof. Code §§ 17203, Plaintiff seeks an order requiring
 20 Defendant to: (1) immediately cease the unlawful practices alleged in this
 21 Complaint; (2) make full restitution of all funds wrongfully obtained from
 22 Plaintiff and the Class; and (3) pay interest, attorneys’ fees, and costs pursuant
 23 to Cal. Code Civ. Pro. § 1021.5.

24 **SECOND CAUSE OF ACTION**
 25 **Violation of the Consumers Legal Remedies Act**
 26 **Cal. Civ. Code §§ 1750, *et seq.***
(On Behalf of Plaintiff and the Class)

27 51. Plaintiff incorporates the foregoing allegations as if fully set forth
 28 herein.

1 52. California's Consumers Legal Remedies Act ("CLRA") prohibits
2 the act, use or employment by any person of any deception, fraud, false
3 pretense, false promise, misrepresentation, concealment, suppression or
4 omission of any material fact with intent that others rely upon such act in
5 connection with the sale or advertisement of any merchandise whether or not
6 any person has in fact been misled, deceived or damaged thereby.

7 53. As alleged herein, Defendant has engaged in deceptive practices,
8 unlawful methods of competition, and/or unfair acts as defined by Cal. Civ.
9 Code §§ 1750, *et seq.*, to the detriment of Plaintiff and the Class.

10 54. Defendant fraudulently omitted the Advancement Fee that it
11 charged for internationally shipped goods and intended that Plaintiff and the
12 Class would rely on that act in purchasing the products.

13 55. Likewise, Defendant deceptively included the Advancement Fee in
14 the overall summary of charges on its invoices without disclosing the additional
15 charge to Plaintiff and the Class.

16 56. In addition, Defendant deceptively concealed the Advancement
17 Fee from Plaintiff by listing the charge (without explanation) several layers
18 deep within the invoice, using small, non-descript font, and failing to indicate
19 that it was a FedEx charge (as compared to a government customs fee).

20 57. The injuries of which Plaintiff and members of the Class complain
21 are a direct and proximate result of Defendant's violations of the law and
22 wrongful conduct described herein.

23 58. Plaintiff and members of the Class are likely to make international
24 purchases again in the future and may be subjected to Defendant's
25 Advancement Fee.

26 59. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff and the Class
27 seek injunctive relief requiring Defendant to cease and desist the illegal conduct
28 alleged in this Complaint and any other appropriate remedy for violations of the

1 CLRA. For the sake of clarity, Plaintiff explicitly disclaims any claim for
2 damages under the CLRA at this time.

3 **THIRD CAUSE OF ACTION**
4 **Fraud By Omission**
(On Behalf of Plaintiff and the Class)

5 60. Plaintiff incorporates the foregoing allegations as if fully set forth
6 herein.

7 61. When Plaintiff and the Class placed international purchase orders
8 and paid for Defendant's shipping charges, Defendant concealed that it would
9 unilaterally impose an Advancement Fee on their orders. As such, Plaintiff and
10 the other Class members did not expect, and were not informed until after
11 payment was due, that additional FedEx fees would also be incurred.

12 62. Plaintiff and the Class reasonably expected that Defendant's
13 shipping services could be obtained for the price stated when placing their
14 orders with international retailers and that no additional fees would be required
15 (except for any applicable government customs fees).

16 63. Defendant was under a duty to Plaintiff and the Class to disclose
17 that it would impose its Advancement Fee because:

18 (a) Defendant was in a superior position to know that Plaintiff
19 and the Class would be subjected to an Advancement Fee;

20 (b) Defendant actually knew that Plaintiff and the Class would
21 be subjected to an Advancement Fee;

22 (c) Plaintiff and the Class members could not reasonably have
23 been expected to learn or discover that Defendant was concealing that
24 Plaintiff and the Class would be subjected to an Advancement Fee; and

25 (d) Defendant knew that Plaintiff and the Class Members could
26 not reasonably have been expected to learn or discover that they would
27 be subjected to an Advancement Fee.

28 64. The facts concealed or not disclosed by Defendant to Plaintiff and

1 the Class, and the facts that Defendant knew were concealed, are material in
 2 that a reasonable consumer would have considered them to be important in
 3 deciding whether to place their international purchase orders and pay for
 4 Defendant's shipping services. Had Plaintiff and the Class known that they
 5 would be subjected to Defendant's Advancement Fee, they would not have
 6 placed their international orders and/or would have paid to ship their orders
 7 using different shipping companies.

8 65. Defendant concealed or suppressed the true price and
 9 characteristics of its shipping services in order to induce Plaintiff and the Class
 10 to act thereon and proffer payment for their orders and, subsequently, for the
 11 Advancement Fee. Plaintiff and the Class justifiably relied on Defendant's
 12 omissions to their detriment and were forced to pay Defendant's Advancement
 13 Fee without proper notice or authorization.

14 66. As a direct and proximate result of Defendant's misconduct,
 15 Plaintiff and the Class have suffered actual damages in the form of monies paid
 16 for Defendant's Advancement Fee.

17 **FOURTH CAUSE OF ACTION**
 18 **Unjust Enrichment**
 19 **(On behalf of Plaintiff and the Class)**

20 67. Plaintiff incorporates the foregoing allegations as if fully set forth
 21 herein.

22 68. Plaintiff and members of the Class did not directly enter into a
 23 contract with Defendant to ship packages internationally, and therefore lack any
 24 contractual remedy.

25 69. Defendant knowingly profited from the Advancement Fee charges
 26 it forced Plaintiff and Class members to pay.

27 70. Plaintiff and the Class have conferred a monetary benefit upon
 28 Defendant. Defendant has received and retained money belonging to Plaintiff
 and the Class as a result of its unlawful and deceptive conduct described herein.

71. Defendant appreciates or has knowledge of the benefit conferred upon it by Plaintiff and the Class.

72. Under principles of equity and good conscience, Defendant should not be permitted to retain the money belonging to Plaintiff and the Class that it unjustly received as a result of its unlawful and deceptive conduct described herein.

73. Accordingly, Plaintiff, individually and on behalf of the Class, seeks restitution and disgorgement of all monies unjustly received and retained by Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Seyed Kazerouni, individually and on behalf of the Class, requests that the Court enter an Order providing for the following relief:

A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as Class representative, and appointing his counsel as Class Counsel;

B. Declaring that Defendant's actions, as set out above, violate Cal. Bus. & Prof. Code §§ 17200 *et seq.*, and Cal. Civ. Code §§ 1750 *et seq.*, and constitute fraud by omission and unjust enrichment;

C. Awarding all economic, monetary, actual, consequential, statutory and compensatory damages caused by Defendant's conduct;

D. Awarding restitution against Defendant for all money to which Plaintiff and the Class are entitled in equity;

E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;

G. Entering injunctive and/or declaratory relief as is necessary to

1 protect the interests of Plaintiff and the Class; and

2 H. Awarding such other and further relief as equity and justice may
3 require.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff demands a trial by jury for all issues so triable.

6 Respectfully submitted,

7 **SEYED KAZEROUNI**, individually
8 and on behalf of all others similarly
9 situated,

10 Dated: January 14, 2015

By: /s/ Samuel M. Lasser
One of Plaintiff's Attorneys

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